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Attorney for Defendant

UNITED STATES DISTRICT COURT  
  
FOR THE DISTRICT OF OREGON  
  
PORTLAND DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
Rashad Q. SANDERS,  
  
Defendant.

Case No. 3:11-CR-385-HZ

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO WITHDRAW PLEA

Federal Rule of Criminal Procedure 11(d)(2)(B) directs a district court to permit a defendant to withdraw a guilty plea before sentencing if the defendant comes forward with *any* fair and just reason for so doing. *United States v. Ortega-Ascanio*, 376 F.3d 879, 887 (2004) (emphasis added). The "fair and just" standard is generous and must be applied liberally. *United States v. McTiernan*, 546 F.3d 1160, 1167 (2008). A motion to withdraw a plea pre-sentence should be "freely allowed" and is appropriate even if the plea itself is otherwise valid. *United States v. Davis*, 428 F.3d 802, 805-806 (2005) (quoting *United States v. Signori*, 844 F.2d 635, 637 (9th Cir. 1988)).

Fair and just reasons for withdrawal include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening circumstances, *or any other reason for withdrawing the plea that did not exist when the defendant entered his plea.*

*Davis*, 428 F.3d at 805 (emphasis in original) (quoting *Ortega-Ascanio*, 376 F.3d at 883). The defendant in *Ortega-Ascanio*, for example, was allowed to withdraw his plea in order to litigate a motion to dismiss the indictment based on intervening case law. 376 F.3d at 887; see PACER Document #87 in case 2:99-cr-1251-RSWL-1, US Dist. Court for the Cent. Dist. of California.

One reason upon which to base a withdrawal of Mr. Sanders' pleas is the issue raised regarding the protective order that is the subject of the *Motion to Modify Conditions of Previously Imposed Protective Order* filed concurrently with the *Motion to Withdraw Plea* that this memorandum supports, see PACER Documents #64-66, 69, filed 2/22/13, and which is a basis for the subsequently filed *Motion to Dismiss*, PACER Document #72, filed 3/1/13.

The liberal application of FRCrP 11(d)(2)(B) should permit Mr. Sanders to withdraw his pleas. See *McTiernan*, *supra*.

RESPECTFULLY SUBMITTED this 3rd day of March, 2013.

Pacific Northwest Law, LLP

/s/ (intended as original in electronic filings)  
Benjamin T. Andersen, OSB 06256